



ARE SHAREHOLDER AGREEMENTS

VALID IN GUATEMALA?

Companies and especially corporations by their characteristics are suitable vehicles for the development of commercial activities in an efficient and orderly manner.

It is usual that different interests exist in corporations when various shareholders participate, whether in regard to decision making, control of the company or to maximize the profits to be received. Therefore, shareholder agreements have been the mechanism which enable us to harmoniously adapt such diverse interests and not affect the functioning of the companies. However, in Guatemala there are doubts about their validity.

The Guatemalan Commercial Code prohibits shareholders from making reserved agreements against the content of the bylaws and articles of incorporation. Such a rule may raise doubts about the validity of shareholder agreements in Guatemala, but what is the scope of that rule? To clarify this issue, it is necessary to differentiate between agreements reserved and contrary to the bylaws, and those parallel agreements, which complement the content of the bylaws.

Reserved agreements are those that regulate issues about the corporation, which directly affect it and that although its content modifies the bylaws, they do not comply with the formality of registration. Reserved agreements are prohibited, since it is intended to protect third parties who, having no information regarding the existence and content of such agreements, could be affected when entering as shareholders in a corporation.

On the other hand, shareholder agreements are contracts that are parallel to the bylaws, which means they neither affect the content of the bylaws nor bind the corporation. Instead, they are agreements that only bind the shareholders involved in their celebra-

tion and its content is limited to the organization of the relationships between the shareholders. Therefore, these agreements are valid, as they do not bind third parties or the corporation.

Although the shareholders' agreements are valid in Guatemala, it is necessary to be careful in the drafting of them, since their content shall not contradict the bylaws. If this latter scenario occurs, its usefulness and effectiveness would be affected, because, when these contradictions take place, the content of the bylaws must prevail. Therefore, it is advisable that the content of the shareholder agreements does not interfere with the content of the bylaws.

Our team at Arias is integrated by professionals with broad expertise in law and corporate governance, who will gladly advise you in the drafting of shareholder agreements, complying with the necessary legal requirements, and focusing on the effectiveness of these, in order to allow you to take advantage of the benefits that these agreements entail.

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Written by:



Herbert Rocael Girón
Associate
Herbert.giron@ariaslaw.com